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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re J.A. et al., Persons Coming Under the
Juvenile Court Law.

B216080
(Los Angeles County Super. Ct.
No. CK76426)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.N.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, Jan G. Levine,
Judge. Affirmed.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and
Appellant.

Office of the Los Angeles County Counsel, James M. Owens, Assistant County
Counsel, and Navid Nakhjavani, Senior Associate County Counsel, for Plaintiff and
Respondent.

A.N. (mother) appeals from the judgment of May 20, 2009, declaring her 12-year-old son J., 10-year-old daughter A., five-year-old son T., and two-year-old daughter K. (the children) dependents of the court under Welfare and Institutions Code section 300,¹ based on sustained jurisdictional allegations under section 300, subdivisions (a), (b), and (j). Mother contends substantial evidence does not support the findings under section 300, subdivisions (a) and (j). Mother does not challenge jurisdiction under section 300, subdivision (b). As dependency court jurisdiction rests upon an uncontested ground, we need not address her contentions. Moreover, substantial evidence supports the findings under section 300, subdivisions (a) and (j). We affirm the judgment.

STATEMENT OF FACTS AND PROCEDURE

The children were born to mother and J.A. (father),² who were married and lived together. Mother had a history of physically abusing A. and T. by hitting them with a belt. Father had a history of alcoholism and, as mother was aware, he was frequently intoxicated. He drove the children while intoxicated. Father was arrested in 2007 for driving under the influence. In 2008, he was arrested again for driving while under the influence, he was ordered to attend classes, and his driving was restricted to driving to and from work. Father and mother had a history of mutually engaging in physical and verbal domestic violence. On July 29, 2008, mother obtained a three-year restraining order prohibiting father from being on the premises of the family home or having contact with mother. In violation of the restraining order, mother allowed father to resume living in the family home in September 2008.

While mother worked more than 60 hours a week as an adult supervisor at a group home for handicapped adults, father took care of the three older children and maternal grandmother took care of the youngest. Father was responsible for picking up the children

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

² The dependency court found father to be the children's presumed father.

from their schools every day. The children shared a bedroom which contained one bed and a set of bunk beds which had no mattress on the top bunk bed. The bedroom had no lights.

The children were detained by the Department of Children and Family Services (the Department) on February 25, 2009, because father was highly intoxicated when he picked A. and T. up from school. He slurred his words, staggered, screamed at the teachers, and could not remember his children's names. Mother arrived, but he refused to let her drive the children home. He "screeched out" of the parking lot and drove in a "bizarre" way. When he got home, he passed out on the floor and was too drunk to be awakened. Father was arrested for violating the domestic violence restraining order. He was also inebriated that morning when he dropped off the children at school.

Sad and withdrawn, A. indicated she was afraid of being injured during the course of the parents' frequent physical fights and arguments. Mother would hit father. A. was also fearful the parents would hurt each other during their fights. Moreover, A. disclosed that mother periodically hit A. "with a belt really hard on her bottom," most recently, two weeks earlier in February. She stated that mother also spanked J. with a belt. A. told a maternal aunt mother was using a belt, and the maternal aunt told mother to stop. A. was fearful of mother and wanted help.

T. disclosed the domestic violence between the parents and stated mother spanked A. and J. with a belt. K., who displayed many tantrums, was not attached to mother. A. was very close to K. and was the only family member who could quiet her down.

Mother was interviewed by social workers and by a psychologist she privately retained to evaluate whether the children could safely be returned to her. She denied being physically aggressive with father, hitting A. with a belt, spanking J., and yelling at the children. She denied that the children witnessed domestic violence. Mother minimized father's drinking and the extent to which the parents had verbal altercations. She denied knowing there was an active domestic violence restraining order against father. She denied knowing father drove the children to school while intoxicated. She denied knowing that father was ever arrested for driving while intoxicated, had a restriction on his driver's license, and was ordered to attend DUI classes. She asserted father no longer drank, but she subsequently contradicted herself.

Mother stated that, until the children were detained, she believed the only help father needed was to attend church with her. She denied understanding why the children were detained.

Father admitted he and mother knew the domestic violence restraining order was still in effect when he was arrested for violating it. The parents were loud and argumentative with each other during an interview with the social worker.

On April 29, 2009, the dependency court adjudicated the petition and sustained allegations under section 300, subdivisions (a), (b), and (j), as follows.

In count a-2, under section 300, subdivision (a), the child has suffered or there is a substantial risk the child will suffer serious physical harm inflicted nonaccidentally by the parent, in that, on prior occasions including in February 2009, mother physically abused A. by striking her with belts. The abuse was excessive and caused unreasonable pain and suffering. A. is afraid of mother because of the abuse. "The physical abuse of the child by the mother endangers the child's physical and emotional health and safety and places the child and the child's siblings, J., T., and K., at risk of physical and emotional harm, damage, danger and physical abuse."

In count b-1, under section 300, subdivision (b), the child has suffered or there is a substantial risk the child will suffer serious physical harm as a result of the parent's failure to protect, by the willful or negligent failure of the parent to protect the child from the conduct of the custodian, and by the parent's inability to provide regular care due to substance abuse, in that mother and father placed A. and T. in an endangering situation in that father drove them while under the influence of alcohol. "The mother failed to protect the children in that the mother knew the father drove the children while he likely was under the influence of alcohol. Such an endangering and detrimental situation created for the children, A. and T., by the parents and the mother's failure to take action to protect the children endangers the children's physical and emotional health and safety and placed the children and the children's siblings, J. and K., at risk of physical and emotional harm, damage, danger and failure to protect."

In count b-2, "the parents have a history of domestic violence incidents. On several occasions, including in 2005 and 2008, the mother and father engaged in violent altercations in which the father assaulted the mother in the children's presence. The father has a criminal

history of two convictions of battery. The parents' ongoing violent altercations endangers the children's physical and emotional health and safety and places the children at risk of physical and emotional harm, damage and danger."

Count j-1, under section 300, repeated the sustained allegation in count b-1. Count j-2 repeated the sustained allegation in count a-2.

The children were placed with the maternal grandmother. Mother initially failed to visit the children on a regular basis and did not help out financially, which necessitated maternal grandmother applying for public assistance. Mother enrolled in individual counseling and a domestic violence group, but failed to attend them on a regular basis.

At the dispositional hearing on March 20, 2009, the children were declared dependants of the court, custody was taken from the parents, and reunification services were ordered. Mother was ordered to participate in parenting, domestic violence counseling, individual counseling to address anger management and case issues, and conjoint counseling with the children when deemed appropriate. Mother was allowed to live in the maternal grandmother's home where the children were placed, provided her contact with the children was monitored.

DISCUSSION

Substantial Evidence

Mother contends substantial evidence does not support the findings under section 300, subdivisions (a) and (j). We need not decide the issue, as she does not challenge jurisdiction over the children under the sustained allegations of section 300, subdivision (b) [the parents' ongoing domestic violence and mother's failure to protect the children from father's drinking placed the children at risk of harm]. Insufficient evidence to sustain jurisdiction under one subdivision does not defeat dependency jurisdiction under another. (*In re Alexis E.* (2009) 171 Cal.App.4th 428, 451; *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875.) "When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of

jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.” (*In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 451.) As dependency jurisdiction rests on an uncontested ground, we affirm the judgment. In any event, were we to address mother’s contentions, we would conclude they have no merit.

A. Standard of Review of Challenges to Sufficiency of the Evidence

“In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court. [Citation.]” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.” (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.)

B. Section 300, subdivision (a)

The purpose of the dependency court law is to provide “maximum safety and protection for children” being harmed or who are at risk of harm. (§ 300.2.)

Section 300, subdivision (a), describes, *inter alia*, a child who “has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, ‘serious

physical harm’ does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.” “While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) A past infliction of harm may establish a substantial risk of harm if there is “‘some reason to believe the acts may continue in the future.’ [Citations.]” (*Ibid.*)

Substantial evidence supports the finding A. suffered, and there is a substantial risk that the children will suffer, serious physical harm inflicted nonaccidentally by mother. Both A. and T. disclosed that mother spanked A. and J. with a belt. A. described the beatings as very forceful. A. was so fearful of mother’s physical abuse she enlisted the help of a maternal aunt to try to persuade mother to stop the beatings. The evidence of the parents’ frequent altercations and of mother hitting father during their bouts of domestic violence indicates mother had a problem managing her anger and lashed out with physical violence when angered. Mother denied she used a belt on A. and J. and denied her role in the domestic violence. The foregoing is sufficient to show, under section 300, subdivision (a), that mother inflicted serious physical harm on A. nonaccidentally and is likely to inflict it on all the children.

Mother asks us to reweigh conflicting evidence and find that the evidence of mother’s physical abuse is not credible. This we will not do. (See, e.g., *Scott v. Pacific Gas & Electric Co.* (1995) 11 Cal.4th 454, 465.)

C. Section 300, subdivision (j)

Mother contends substantial evidence does not support the findings under section 300, subdivision (j). We disagree with the contention.

Section 300, subdivision (j), provides in pertinent part: “The child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions.”

Mother does not challenge the sustained allegation in count b-1 that mother's failure to protect A. and T. from father driving while under the influence placed siblings J. and K. at risk. We have concluded substantial evidence supports the sustained allegation in count a-2 that mother's physical abuse of A. placed J., T., and K. at risk. Counts j-1 and j-2 repeat verbatim the allegations of counts a-2 and b-1. It necessarily follows from the foregoing that jurisdiction under section 300, subdivision (j), is supported by substantial evidence, and mother's contentions are without merit.

DISPOSITION

The judgment is affirmed.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

MOSK, J.